

STATE OF MICHIGAN
COURT OF APPEALS

NANCY J. KENNEDY,

Plaintiff-Appellee,

v

MICHAEL M. KENNEDY,

Defendant-Appellant.

UNPUBLISHED

June 15, 1999

No. 209777

Kent Circuit Court

LC No. 96-005597 DM

Before: Griffin, P.J., and Wilder and Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered by the trial court on January 28, 1998. We affirm.

Defendant contends that the divorce judgment in this case is void because Kent Circuit Court never obtained jurisdiction following transfer of the case from Ionia Circuit Court due to plaintiff's failure to pay fees and costs related to the transfer pursuant to MCR 2.227(A)(2).¹ Defendant's argument is meritless for several reasons.

First, it is undisputed that Kent Circuit Court had jurisdiction over this divorce action at the time of filing since both parties were then residents of Kent County. This is not a case where the parties attempted by stipulation to confer jurisdiction on a court which had no jurisdiction. *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). Instead, the parties stipulated to the transfer to remedy the lack of jurisdiction.

Second, the case was accepted as a transfer via the friend of the court, with no attendant fee for the transfer. Later, when the Kent Circuit Court corrected the case classification, it waived the applicable filing fee nunc pro tunc. Therefore, there was no violation of MCR 2.227(A)(2) for failure to pay the "applicable" filing fee.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Regarding the question of costs and attorney fees under MCR 2.227(A)(2), defendant failed to properly raise this issue before the *transferring* court, which has the authority to impose such costs. MCR 2.227(A)(2). The parties' stipulation to the transfer of the case from Ionia

Circuit Court did not contain any conditions for payment of fees or expenses. The Ionia Circuit Court merely ordered the transfer pursuant to the stipulation. There is otherwise no indication in the record that defendant either requested reimbursement or submitted any evidence of his reasonable expenses to the Ionia Circuit Court. Although defendant provides the affidavit of his counsel at the time of transfer as evidence that “he never stipulated to waive attorney fees incurred by defendant in being compelled to proceed in the wrong court,” that same counsel did not object to or address the lack of costs at the time of transfer. When defendant finally did request reimbursement of expenses before the transferee court, Kent Circuit Court, more than a year after the transfer, his motion requested reimbursement pursuant to an inapplicable court rule.

Defendant’s claim is therefore without merit because his own actions contributed to the result of which he now complains. A party cannot stipulate to a matter or request an action of the court and then argue on appeal that the resultant action was error. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997). Error warranting reversal must be that of the trial court and not one to which an aggrieved party contributed by planned or neglectful omission of action on his part. *Detroit v Larned Associates*, 199 Mich App 36, 38; 501 NW2d 189 (1993).

In any event, we note that following the one-day nonjury trial in this matter, the parties agreed to a divorce settlement that included an allocation of attorney fees. Hence, if not waived, the issue has certainly been abandoned.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof

¹ MCR 2.227(A)(2) provides:

As a condition of transfer, the court shall require the plaintiff to pay the statutory filing fee applicable to the court to which the action is to be transferred, and to pay reasonable compensation for the defendant’s expense, including reasonable attorney fees, in attending in the wrong court.